

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5027 of 1996

to

SPECIAL CIVIL APPLICATION No 5028 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KM PATEL

Versus

DIRECTOR OF EMPLOYMENT & TRAINING

Appearance in both the matters :

MR MUKESH R SHAH for Petitioner

MR DA BAMBHANIA for Respondent No. 1

MR ND GOHIL AGP for Respondent No. 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 27/06/97

ORAL JUDGEMENT

Petitioners in both these petitions, Craft

Instructors serving under the Government Industrial Training Institutions, had applied for House Building Advance some time in the year 1987. Since the petitioners' applications for advance were not processed for a long time, they borrowed loan from private agencies like Banks, Life Insurance Corporation etc. and constructed the houses out of the funds borrowed as stated hereinabove. In the meantime, the petitioners' salary was increased and on account of the increase in the salary, they were entitled to a larger amount of loan. The petitioners, therefore, made applications for larger amount of loan as was permissible. The said applications for loan were sanctioned under orders dated 4th March, 1996. Under the said order, the petitioners were entitled to withdraw Rs.60,000/- by way of first instalment of the loan money. One of the conditions of the said order (condition No.4) stipulates that the loan amount can be withdrawn only after producing the necessary documents. It further stipulates that the withdrawal of loan amount should be made within a period of two months or before 31st March, 1996, whichever be earlier. The aforesaid order dated 4th March, 1996 was received by the petitioners on 18th March, 1996. The loan money was also received by the Principal of the Institution. However, since the petitioners had already constructed their houses from the money borrowed from other agencies, they immediately informed the Principal regarding the same and made an application for change in the purpose for the loan. The said applications were forwarded to the competent authority on 30th March, 1996. The petitioners' applications, were however, rejected under order dated 15th June, 1996 on the ground that the petitioners had failed to withdraw the loan amount before 31st March, 1996 as stipulated under the sanction orders dated 4th March, 1996. Feeling aggrieved, the petitioners have preferred these petitions.

2. Learned advocate Mr. M.R.Shah has appeared for the petitioners. He has contended that the order of the competent authority rejecting the petitioners' applications for change of use is unjust and contrary to rules. He has relied upon Rule-94 of the Gujarat Financial Rules, 1971, and has submitted that the loan can be borrowed even for the purpose of repayment of loan or an advance and thus the petitioners were entitled to the said loan amount for repayment of the loan borrowed by them for the purpose of construction of the houses. He has further submitted that condition No.4 contained in the sanction order dated 4th March, 1996 is also unjust. The orders of sanction were made on 4th March, 1996 which

were received by the petitioners on 18th March, 1996. He has submitted that in no circumstances a Government servant could have produced necessary documents for the purpose of withdrawal of the loan amount within a short period of 10 to 15 days. The Government took long time of about ten years to sanction the loan and that too in the last month of the Financial Year i.e. in the month of March, 1996. The petitioners ought to have been given clear two months' time to produce necessary documents. I do agree with the contentions raised by Mr. Shah. It would be impossible for any Government servant to secure the necessary documents within a period of 10 to 15 days as is stipulated in the above referred condition No.4. Besides, the petitioners' application for change of the purpose of the advance applied for by them should not have been rejected on a technical ground that the petitioners had failed to withdraw the loan amount before the end of the Financial Year i.e. 31st March, 1996. In the circumstances, these petitions are allowed. The impugned orders dated 15th June, 1996 (Annexure-F and Annexure-E respectively) are quashed and set aside. Respondent No.1 shall consider the petitioners' application for change of the purpose afresh in accordance with law. Same shall not be rejected on the ground that the petitioners failed to withdraw the loan amount before 31st March, 1996 as stipulated under the sanction order. This exercise shall be completed within a period of three months from the date of receipt of copy of this order by the respondent No.1. Both the petitions are allowed to the aforesaid extent. Rule is made absolute in both the petitions. There shall be no order as to costs.

JOSHI